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**VALENTIM FERNANDES AND JACOBO CROMBERGER:
THE PIONEERS IN THE BIOGRAPHY OF PORTUGUESE
COPYRIGHT AND LAW OF LITERATURE
IN THE PORTUGUESE LANGUAGE**

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ABSTRACT: This paper describes and critically analyzes the first attributions of privileges occurred in Portuguese-speaking countries in the 16th century, especially Portugal, as well as the reflections of these facts in the history of Copyright in this country and those that historically are related to it, which means historically the beginning of a law of literature in the Portuguese language.

KEYWORDS: copyright; privileges; law of literature; copyright history.

**THE BEGGININGS OF COPYRIGHT AND LAW OF
LITERATURE**

Within the broad universe inherent in the field of law and literature, there are three ways of understanding the thematic intersection between these two areas of knowledge: law as literature; law in literature and law of literature.

The field of law as literature aims at analyzing the aspects of law that relate to the analysis of linguistic and structural tools, observing the position of law as literature and, to some extent, the very language used in legal creation.

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Law in literature is devoted to examining the circumstances, the themes, the judgments about the law that are part of literature, in attempt to understand the relation between what literary creation can bring to the universe of understanding the Law. Law, thus, could supposedly appear within literature.

The third analysis environment of the thematic intersection between these two areas of knowledge is law of literature, which includes the appreciation of the law regarding the protection of the process of literary creation, hence configured historically and systematically as *copyright*.

Some scholars that specialize in the study of law and literature may possibly consider this third area as the least relevant of them all.

However, with regard to the appreciation of the law that allows the protection of the creation process, copyright is an area of law of great importance and prominence, which contains numerous autonomous institutes.

In this sense, the analysis of the first aspects of what is historically defined as copyright is relevant to law and literature, especially with regard to the law of literature, even because copyright and the printing privileges themselves began by attributing protection of literary and musical works (more precisely, scores, at the time), to the detriment of works of any other nature, initiating all discussions inherent in copyright since then.

This paper aims at analyzing, in its original source, the first three attributed printing privileges in the Portuguese language, looking for the hypothesis of understanding, at the origin, the first movements of copyright and the protection of the law of literature. The theme is particularly interesting because it can be concluded that when the first privileges were granted, the investments of the printers were protected against the attribution of benefits for the protection of the authors.

In this sense, one should bear in mind that copyright was not born romantically as a protective system of authors, of creators who have only been “romanticized” throughout history. On the contrary, creators, at least in the field of the arts, were for a very long time regarded as outcasts, and,

as outcasts, it was not important that they received social rights, a concept which, by the way, until the eighteenth century, did not exist as such in the scenario of artistic creations. The same was true, of course, for authors of literary works who, as outcasts (in a literal sense of the term), did not have much social consideration. On the other hand, although the idea of protection of artistic creativity was primarily connected to copyright, intellectuals, both authors and creators of the artistic environment, did not even participate in the first moment of the historical protection of copyright. Hence the relevance of understanding this embryo of copyright as the beginning of protection of authors from a protection of literature, which was and the activity linked to the idea of the possibility of creative works reproduction.

Paradoxically, and in general lines, therefore, in the first authorial movements, the authors were not legally independent. This can be seen in many countries, including France, England, Italy and Portugal, among others. The investment in technical equipment was, therefore, what led to the establishment of protective exclusivity of the investment itself, before characterizing the protection of a subject of the creative process.

In the case of Portugal, this logic is also repeated, as was the case with printers, typographers and booksellers in the fifteenth century, which was, in fact, the moment of the effective emergence of printing privileges in European territory in general, especially as a consequence of the German diaspora of printers from the region of the Mainland.

The purpose of this study is to point out the pre-existence of copyright as such, when analyzing the first privileges granted in Portugal, with the aim of guaranteeing exclusivity to what was then called “the noble art of printing”. As a consequence, to establish the beginnings of a law of literature, related to a basic foundation of its projection as art and linked to a technological aspect, that is, the appearance of the press, which, in turn, would enable the development of written literature as a form of artistic expression.

For this, three of the first printing privileges of the history of Portugal and, as a historical result, in Portuguese language, are analyzed. It is important to state that the appearance of the press was the technological breakthrough that allowed the existence of all this complex of discussions, although the subject's valorization (and understanding) from modernity was, among other elements, an aspect of non-technological order that led to the emergence of the debate on the rights of creators.

The first privileges bear witness to the fact that the first steps in the direction of copyright in Portugal, as in other European countries, were given in the direction of the protection of investors and not of the creator-subjects, and that literature and the possibility of reproduction of literary works were the main discussion at the time.

THE PRIVILEGES: HISTORICAL BACKGROUND OF COPYRIGHT AND LAW OF LITERATURE.

A well-known fact of the doctrine and already part of the authoritarian common sense, the antecedents of the copyright laws were the so-called privileges, sometimes named as printing privileges. In the case of the European monarchies, they were called in the Spanish language *graceful privileges*, instituted by simple will, benevolence or partiality of the superior that credited it (Rogel; Drummond, 2010, p. 1)².

To this indication, however, it is important to add some other ideas to the understanding of privileges and their importance in copyright and in the development of literature and the related law.

There were many kinds of privileges, and indeed, it is a little reductionist to try to treat them in the overly generic realm of copyright, as if a single historical moment or circumstance caused them to arise.

² According to Rogel and Drummond (2010), in the case of Portugal, Valentim Fernandes was the holder of the first printing privilege for the book by Marco Paulo (also named Marco Polo) by Nicolau Veneto. There is, however, a divergence of date, prevailing the attribution that such fact would have occurred in the year 1502. Pereira (2008, p.52) and Leitão (2011, p.23) are among those that indicate that the first privilege would have been attributed in 1502, so that Valentim Fernandes could publish his translation of Marco Paulo. In the case of Spain, the privileges granted to the printers date originally from the time of the Catholic Kings (1502) and those attributed to the authors, from the reign of Carlos III (1753).

Privileges were indeed a form of instituting powers (and only incipient rights) well before the advent of constitutionalism (hence, they are obviously prior to the advent of the concept of constitutionalism and the revolutionary “equality”) and also prior to the Napoleonic codification. There was thus no universalization of rights required that would later be stressed and understood as a condition of possibility call something a legal right, effectively.

Therefore, when it comes to analyzing print privileges historically, there is no way to speak, in this sense, in any way, under equal conditions of attribution of rights to authors (subjects-creators), or even in their comparison with publishers or any other acting agents, in what would still be the embryonic beginning of a “cultural production”.

That is to say, in trying to understand the idea of privileges (since the Middle Ages), their meaning must be pointed out in an order of what they meant, observing them in a generic way, and not only as attributions that led to the possibility of exclusivity for printing.

And it is precisely in this order of ideas that Spain indicated that “beneath the plane of the kingdom, particular legal orders proliferated [...] all protected by the rule of preference of the individual over the general. The common designation for these legal orders was that of *privilege*” (2012, p. 158). It was, therefore, a matter of law that circulated within the scope of ordinary law, which, after all and being very reductionist, was a reinterpreted Roman law. Moreover, in addition to the ordinary law, canon law also had a strong presence in medieval society, as well as other legal codes, of those who lived outside the Christian territorial universe.

On the other hand, there is a clear conception of what privileges are by the status received by the privileged, by attributing to these subjects differentiated conditions in society. It was the case, just to exemplify very generically, of part of the Spanish nobility that had tax immunity; to whom also it was not possible to punish with infamous penalties and that were prevented from being arrested by debts (unless due to the kingdom). They

were also allowed to perform penalties at home, and kept the house and the horse as not subject to embargoes (Escudero, 2012, p. 675).

The concept of privileges as concessions of express advantages and which played an important role in the Low Middle Ages (Gilissen, 2013, p. 292) should be understood as an element of strengthening understanding of what they meant in the legal order and the respect they were given as an element that inspired social respect, although its condition of law could be questioned, since they did not have legal main characteristics, which are: generality and permanence (Gilissen, 2003, p. 293).

There is, however, an important characteristic that must be observed in the understanding of privileges and their historical development as a constituent element of Law. There were many that were attributed based on custom and therefore were a simple “continuation” of customary practices and attributions previously attributed. This characteristic often demonstrated the strength of the privileges and should be understood in the historical development of copyright by its importance as the driving force of the legal category itself, which would then arise from the content of printing privileges, or be protected by investors, at first, by assigning rights to subject-creators.

It is worth mentioning the words of Gilissen (2013, p. 292), when treating privileges (generically and not exclusively related to book printing) as customary practices:

In most cases, these privileges do nothing more than confirm an existing situation based on custom: *the privileged group is already in possession of practical recognized advantages: the documents only confirm this situation* (2013, p. 292, we emphasize)³.

Now, this more open and broad understanding of privileges indicates the difference between what might constitute an idea of privileges in a general way and what were, in particular, *printing privileges*. At the same

³ The figure of privileges as attribution of private condition and source of Law can already be observed in the *Digest*, for example in *Paulus, Modestinus and Isidoro* as indicates Garcia-Gallo (1971, p.111).

time, however, such an interpretation also extends the understanding of privileges far beyond (mere) real assignments.

This is evidenced by the fact that the privileges were many more than the simple real assignments, although in the case of printing privileges they were generally a consequence of the attribution of conditions of exclusivity by the royal power. In this sense, there were exclusivities, therefore, of different natures. While some privileges were granted to the beneficiary to receive generically the same advantages of figures belonging to the nobility, such as the privilege assigned to the printers Jacobo Cromberger (1508) and Germán Galhardo (1530⁴, among others, there were privileges exclusively focused on printing, Those attributed to Valentim Fernandes in 1502 and in 1503. As can be seen, therefore, within the scope of the biography of copyright and the law of literature, one can point out differences of content also in the privileges generically named “printing privileges”. The existence of differences between the privileges mentioned above demonstrates this information, which, in turn, can be proven in the course of this study.

That is, even in the small universe of so-called printing privileges, there is a divergence of meaning between what they end up signifying as documents, that is, as to their nature, and also, as a consequence, what they mean historically, especially in the biography of the copyright.

Going further and going back to the still broader concept of privileges, what we can conclude is that the idea of privilege is much more extensive than that customarily referred to in the copyright theoretical area.

It is important, therefore, to emphasize these brief differentiations, realizing that privileges were also (1) the statutes (of the cities); (2) the customs instituted and practiced in the boroughs and, finally, (3) the

⁴ Galhardo, although an important printer of the fifteenth century in Portugal, does not have his privileges analyzed in this study, since the idea developed here is to deal with the very first documents that attribute exclusivity to printings in that country and, in this sense, Fernandes and Cromberger are the pioneers, having been holders of the first three privileges of Portuguese history.

special rights of individuals or particular groups⁵. Added to these are the royal privileges and/or the ones instituted by the monarchs in a general way, in which the attributions that led to the designation of *printing privileges* are found, as they are a kind of royal privilege.

Such differentiation must also be reiterated as regards generic privileges and printing privileges. This is because there is a misunderstanding of this terminology when it is generally used when one concludes that many of the first printing privileges were in fact intended for generic activities, as in the case of the privilege granted in Portugal to some of the pioneer printers, like Cromberger.

There is a truism in the observation that it was not often a matter of granting specific privileges for printing permission, but of much wider content, by means of licenses so that the said beneficiary printers would enjoy the same conditions that of the knights of the royal house, which, as indicated, occurred with Jacob Cromberger, as well as Deslandes points out:

Jacob Cromberger was a German and book printer. He was invited to serve in Portugal, where he dwelled from the 20th February of the year 1508 at the mercy of all the graces, privileges, freedoms and honors which there were then for the knights of the royal house. The *license* of mercy grants the same distinction to all those who then exercised or of the future to exercise the noble art of typography (1881, p. 7, emphasis added).

The determination was much broader than only related to the printing of works in general, and also obviously much broader than the privileges given for printing for specific texts, which had occurred before, for example, in that country, with Valentim Fernandes, as a printer (in 1502, 1503 and in other occasions) and would occur with Gonçalo de Baena (1536), Balthasar Dias (1537) and Luiz de Camões (1572), being certain that, in the case of the latter three, authors of literary works⁶, therefore, in a

⁵ From which one derives a properly accented semantic of privilege in the sense of personal advantage.

⁶ With the exception of Baena, whose work had a literary and musical nature.

manner significantly different from that attributed to the privileges subject of this study in the preliminary stage of privileges. Here, one might say, is an important distinction in the understanding of a law of literature, for while the pioneers of privilege assignments were investors, creator-subjects appear on the scene benefiting only a little over 30 years later.

On the other hand, it is necessary to reaffirm that the attribution of privileges and the identical condition of the knights was seen as great honor to the printers who had high social consideration and it is important to emphasize this importance.

First, it should be pointed out that there is indeed a certain obviousness, as historical logic reasoning, to understand that print privileges would derive from real attribution by interpreting (and this is one of the interpretations for expression) the privileges generally understood as antecedents to the emergence of copyright laws and as attributions derived from monarchical attributions.

On the other hand, and not in opposition to this idea, it should be understood that if the juridical order was accentuated in a differentiation of personal status and in fact that it was a characteristic quite present in the old regime, it would not be totally incomprehensible that the first laws of authors favored the ones who had their antecedents (as subjects) in the attribution of privileges. Just as it would not be incomprehensible that its attribution should be socially accepted as a result of an understanding that the privileges had validity as juridical norms (generalizing situations, as the notions of privilege indicated).

As Hespanha correctly states (2012, p. 159): “the rights of each person were the legal translation of the situation that each person enjoyed in that hierarchical society”. And there were some who reached such a prominent position that they were granted privileges beyond their own territory, as was the case of Cromberger, who was based in Spanish territory and not in Portuguese.

Thus, absent the component of the idea of equality and consequently accepting the idea of differentiation of personal status and that the privilege represented a kind of particular juridical order, it would not be absurd to

understand the emergence of privileges that were attributed to particular groups. In this sense, the attribution of privileges that determined conditions similar to those of the royal knights demonstrates the importance of typography, of the printers and of what was denominated like the “noble art of the press”, of which it is concluded that it was an very well regarded activity by the monarchies, in a general way.

Adding the condition that would lead to the attribution of privileges by a social status differentiated to the social consideration on the noble art of book printing, the differentiated status could also be attributed to a beneficiary that deserves consideration for its social superiority, who, as historically has been verified, were the editors, the printers, the typographers. That is, superiority and high social consideration were attributed to the typographer and the printer and not to the author, who was still forming as a truly autonomous subject of law and, above all, as deserving of social consideration. This is, therefore, an important element that indicates, even, a philosophically deficient emergence of copyright. It would not be considered philosophically deficient only if typography were considered technically more relevant than creation itself. What is the problem, though? The fact is that typography, in fact, in its beginnings, was understood in some sense as an artistic achievement in the creation of the first printed works. And this idea can undo the initial notion that first prints were mere technical and non-artistic activities. To do so, one must think of the incunabula⁷, and in the case of Portugal one can also evoke the existence of important works that were considered, in a contemporary expression, “true works of art”, such as *Vita Christi*. This theme, however, should be addressed in another study.

It remains to be understood, finally and for this study, that the term privileges has the various meanings presented, and it is relevant, from this understanding, to analyze the first privileges granted in Portugal and its reflections in the maturing of the first steps of copyright.

⁷ Incunabulo, among other meanings, means the printings that have occurred since the beginning of the press until the year 1500.

THE BOOK BY NICOLAU VENETO ON TRAVELS OF MARCO POLO AND THE PRIVILEGE OF 1502 ATTRIBUTED TO VALENTIM FERNANDES.

The printer Valentim Fernandes (“Valentim Fernandes, the German” or “Valentim Fernandes of Moravia”) was the first beneficiary of privileges related to the printing and typography industry in Portugal. Fernandes was of German origin. He was born in Moravia in the 15th century, in an inaccurate date (in the city of Olmütz, now Olomouc, in the Czech Republic, from where he went to Nürnberg), and died, in an also imprecise date (between 1518 and 1519), in Lisbon, where he followed a tradition of typographers originated from Mainz. He was one of the participants of the diaspora of the German typographers after the advent of the press in the middle of the fifteenth century in that region of Europe.

In his first moment in the Iberian Peninsula, he acted as a “language” – an expression that was used at the time to designate an interpreter – of the German doctor of Nürnberg, Jerônimo Münzer (whose surname was Monetary), and it is said that he would successively reach good contacts and prestige with the local society, having traveled by the peninsula already proficient in the Castilian language.

While it is true that, as in other European countries, the granting of privilege in the form of exclusivity guaranteed and, in a way, broadened the interest and possibility of investing in the local press industry, it must also be understood that before being benefited by any privilege, Fernandes began acting as a printer and a bookseller. And his performance was repeated by other pioneers who, before they even received privileges, invested in the new industry. That is, the first printers and booksellers had already been working in the trade even before any exclusivity was attributed to them, and it cannot be pointed out, therefore, that the advent of exclusive privileges, predecessors of contemporary copyright, would be the motivation for the development of the press at the first moment. Obviously, however, and as you can imagine, once the exclusivity is guaranteed, the investment becomes more secure and develops the industry, but it was not any privilege or right that worked as propulsive springs of the first prints in Portugal.

Before giving any privilege, as already indicated, Valentim Fernandes was already acting as a printer and also as a bookseller, and in 1495, in partnership with Nicholas of Saxony, he published the text *Vita Christi*, written by Ludwig of Saxony, Considered the first illustrated book printed in Portugal and one of the most important works printed in the Portuguese language. He also published *the Beneficial Rules against membership* (no known date); *Votivale missarum secundum ritum Romane curiae* (04/10/1496) and *Story of a very noble Vespasian emperor of Rome* (04/20/1496).

On the other hand, and although there are sources that indicate that the first printing privilege was what authorized Fernandes exclusively to print his translation of the trips of Marco Paulo (Marco Polo), even for his indication in the body of the text, there are doubts of the Privilege assignment. It is the understanding, for example, of Deslandes:

We briefly pointed out some news that came from him; they are as follows: [...] having translated from Latin and Tuscan into Portuguese language the celebrated voyage of Marco Paulo to the most ancient countries in the thirteenth century, well known to the erudite; The treaty of the Dominican Pepino of Bologna; A letter from India from Genoa St. Stephen; And the voyages of Nicholas Conti, written by Poggio, Florentine, secretary of Pope Eugenius IV; Translated in Lisbon in the year 1502, dedicated to King D. Manuel, rendering valuable service to the Portuguese literature and to the history of our discovery; On February 12, 1503, had the privilege of printing the books of the Regiments (1881, p. 31).

In general terms, however, and to all evidence, Marco Paulo's book of stories is considered the first text to be published in Portuguese under the authorization of a royal privilege. The indication of the privilege is printed on the cover sheet, as it would be common thereafter. Later, in some occasions, the very text that granted the privilege was reproduced in the work (as is the case of the editions of the *Lusíadas* de Camões, 1572) and, in others, there was the mere indication of its existence, as is the case with the book of Marco Paulo. It was also common for the privileges to be indicated by means of an official document signed by the king by means of posters, a document that does not form part of the collection of Portuguese institutions that keep the historical documents that recount the biography of the copyright.

On the other hand, there is sufficient historical documentary evidence that feed the pioneerism of the privileges to be of the work edited by Fernandes in 1502, narrating the adventures of Marco Paulo, especially the express mention of the existence of privilege in the original work – after the information of the text of the work and even before the epistle and the introduction, follows the indication of what would be the work and the privilege:

Ho livro de Nycolao veneto. Ho trallado da carta de hũu genovês das ditas terras.
Cõ privilegio del Rey nosso senhor. ã nenhuũ faça a jmpressam deste livro. nẽ ho venda em todollos se regnos e senhorios sem liçẽça Valentim fernãdez so pena cõteuda na carta do seu previlegio (Portugal, 1502, p.1)⁸.

As in other countries, this privilege inaugurates the condition of permission holder or grantor to one who could make the works reach the public through the multiplication of copies and their reproduction, which, in this case, was the printer and bookseller Valentim Fernandes, not an author. The dual function of printer and bookseller stems from the fact that in the workshops where the copies were printed, they could be sold to the general public.

As it also became a historically repeated circumstance, the printing privilege was assigned to an investor in the printing industry over exclusive print permission for any author. In the case of privileges in Portuguese, the first ones attributed to authors were those granted to Gonçalo de Baena and Balthasar Dias, respectively in the years 1536 and 1537, therefore, as already indicated, just over 30 years after the assignment to Fernandes.

Valentim Fernandes was, therefore, a pioneer in typography in Portugal and an exponential figure of the emergence of copyright in its even more tender stage, having received several advantages as a result of his activities and repeated authorizations to print. Among these, the one that was attributed to him in the year following the first privilege, dating from 1502, and that assured him the provision of important book for the Kingdom, the *Regiments of Judges and Officials in Portugal*, whose privilege is also analyzed.

⁸ Translation note: Medieval Portuguese. Translates into: The book of Nicolau Vêneto. The translation of the letter of a man from Genoa. With the privilege of our lord the King. May no other print this book. May no one sell this book without the authorization of Valentim Fernandes under the penalty described in the privilege.

THE REGIMENTS OF JUDGES AND OFFICIALS IN PORTUGAL AND THE PRIVILEGE OF 1503 GIVEN TO VALENTIM FERNANDES

Fernandes had reiterated that he had been working with typography before receiving the privilege of printing the book with the stories of Marco Paulo (Marco Polo), including the printing of incunabula, and then benefited from the privilege of printing by King Dom Manuel I so that he could edit and market the book of the Regiments of Judges and Officials, in the year 1503.

The authorization, apparently, was not an official act, and the printer had been challenged to obtain this authorization, since Valentim Fernandes applied to Commander Bras A. Correia for the privilege to be granted.

Deslandes also interprets the facts inherent in the granting of the privilege, he who compiled, as early as 1881, the main historical documents concerning the various authorizations and privileges at the beginning of typography and printing in Portugal:

Valentim Fernandes [...] had the privilege of printing the books of the Regiments by legal decision on February 12, 1503, which at his request was proclaimed by the officials of the justice and to all notified by the editions affixed in the more public places of the cities (Delandes, 1881, p.13).

Controversies aside as to which would be the first granted documentary privilege, the privilege dated 1503 presents some curiosities that, from now on, can be extracted from the license that has been assigned.

First, the qualification presented by Valentim Fernandes to receive the privilege was that of a bookseller, and not that of a printer: “Valentim Fernandez was seen as a *bookseller* and presented to the said Commander this document of the said lord that it is as follows” (Portugal, 1502, p. 01, emphasis added).

Secondly, the text seems to indicate that the books for which the privilege was being awarded were already printed and ready for commercialization before the award:

Nos el Rey per este noso alvará nos praz, pello trabalho que vallentym fernandez *tem levado na empresam dos livros dos Regymentos* que ora mandamos fazer pera todo o Reyno dos Juizes e officiaes, que nenhũa pesoa em

nosos Reynos os nom posa impremir (Portugal, 1502, p.01, emphasis added)⁹.

This argument is also defended by João José Alves Dias (1995, p. 24), stating that “by that date Valentim Fernandes would probably have delivered the books to the competent services (for printing)”. This is because, as Dias correctly puts it, “no public announcement is made and no ‘notices’ are posted, prohibiting the publication by others of a work that does not yet exist, nor does it announce that a work is going to be printed, and therefore prohibits everyone from doing it” (1995, p. 4), as a consequence of this fact. It is curious to note that the existence of printed books could lead to the creation of an accomplished fact on the part of the printer who – as a consequence of some good relation with the monarchy, as well as understood that the privileges were also, as already stated, *legal frameworks* – prepares an environment for Fernandes to anticipate the granting of a privilege. In contemporary times, it would be to believe in a law and exercise it even before it is considered and attributed.

Although Valentim Fernandes was a figure who embraced the condition and the office of printer and bookseller, in addition to his other activities not directly related to such offices, but always considered of markedly educated character, the fact that the privilege was attributed to a bookseller (or someone who has, among other things, bookseller status) is of the utmost importance at the beginning of the development of copyright and hence of the law of literature.

This is because, although there was at the time a marked promiscuity between the owner of all the material of the printing industry, the printer, the publisher and the bookseller (who would today be the printing companies, publishers and bookstores), their performance and their function were relatively limited. While the printer appeared to be the subject who sought the works so that they could be effectively transformed into products, the booksellers acted as merchants who, after all, distributed the products to the final consumer.

⁹ Translator note: in archaic Portuguese, “In the name of the King, by the means of this license, for the work of Valentim Fernandes in the printing of the Regiments that were thereby ordered for all the kingdom’s judges and officials, let no one in the kingdom print them without permission”.

It is not possible to pinpoint exactly what could have happened if, in the development of copyright, the allocation of privileges was granted to final distributors, that is, to booksellers (which historically might be a hypothesis). But it should be pointed out that the distinction between ordinary property rights and the concept of intellectual property would in the future have different interpretations from those given to them at the time, but this idea is mere speculation. All this, however, is curious to the fact that a bookseller obtains the privilege of marketing products, even if the privilege was generally considered a printing privilege.

In some ways, therefore, although indirect, it should be pointed out that the tradition of printing, in its beginnings, arrived in Portugal already in its first chapters, as well as in many European territories, as a consequence of the well-known German diaspora of the fifteenth century, after the invention of the press.

There is, however, one who does not seem to agree exactly with these ideas, arguing that “the typography was already markedly developed when it made its entry into Hespanha, and the extremely old-fashioned aspect of the early productions here is due more to the imperfection of the performers than to the General state of the new graphic art” (Moniz, 1913, p. 3)¹⁰.

There is also no absolute precision as to the generative fact of this German diaspora, but one can point to two basic ideas that justify it and which influence, therefore, the emergence of the first privileges, such as those of 1502 and 1503 attributed to Valentim Fernandes.

The first would be that the local market would not absorb the number of presses originating in the region, a very reasonable argument considering that all creative advent capitalist needs a market expansion. Considering that the rest of Europe would obviously need a movement of goods produced by this new industry, it is reasonable to believe that the German diaspora was due to the need to expand the market, which obviously includes the Iberian peninsula, which is widely known here. There are, however, indications of a second, much more specific justification, which

¹⁰ Hespanha, in the citation, refers to the territory that now encompasses the Iberian Peninsula, namely Spain and Portugal.

refers to the fact that the succession of the Archbishop of Mainz would have caused the Gutenberg aides to leave the city. The most likely date for the death of Gutenberg is the year 1468, which means that before that the exodus of his advisors would have already occurred. Regardless of the real reason for the exodus, it is indisputable that for Portuguese language and culture this historical factor was enough to frame Portugal as a pioneer country in the development of typography and the press, as was the case with other European nations.

It is also important to highlight that Valentim Fernandes would end up being recognized not only for his importance as a precursor in typography, as a printer and bookseller, but also for his role as collector¹¹ of facts about discoveries and trips related to them, which, in the context of Portuguese history, is an absolutely relevant achievement, especially because of the crucial importance of Portuguese pioneering in navigation and in the whole historical process of discoveries. He would, therefore, be an adventure enthusiast and an accountant of his own and third-party chronicles, which was an important subject matter in the early days of the press, as well as an important literary genre.

In addition to his relevance as a printer and enthusiast of the printings of third-party works that contained adventures, Valentim Fernandes is historically recognized for having written the *Manuscripts of Valentim Fernandes*, a text that is included in the list of travel chronicles. In addition to this text, he is also responsible for the so-called *Valentim Fernandes* or *Notto Act of Valentim Fernandes*, which is a manuscript (among other few and very rare ones of the time) written in Latin, by Valentim himself, to describe the expedition of 1501/1502 in Brazilian lands, an expedition in which Américo Vespúcio participated. This document is an important source that unites the history of Portugal with the history of Colonial Brazil. The document was lost in time and, apparently according to doctrine and extensive documented research, there

¹¹ The use of the expression collector of facts is relevant (and commonly used), considering the distance between the daily life of the urban centers of that time and the trips and the great discoveries of the time.

remains only one copy of it¹². Although these writings do not configure themselves as texts specifically related to the history of the copyright, they deserve to be highlighted due to the importance they had in the life of Valentim.

Another relevant and important information about Valentim Fernandes's work as a printer and editor stems from the fact that he, to a certain extent, left direct successors in his activities, who were then considered rather noble. It is possible, therefore, to attribute Germão Galharde (*German Gaillard*) the condition of direct successor of Valentim Fernandes, in view of having acquired from his heirs the typographic material of the German bookseller, which was eventually used by the typographer of French origin.

On the other hand, with the specific analysis of the privilege granted in 1503 (and its predecessor in 1502), it is curious to note how the allocation of privileges occurred in a relatively short period of time in different European countries, but a similar statement cannot be made about the temporal intersection between specific European copyright laws.

In this sense, the attribution of a privilege in Portugal, at the indicated time, and the privilege previously granted in Italy in 1469 to *Johannes de Speyes* – only to situate the time difference in an explicit comparison – shows that until that historical moment the attributions of privilege had an established relation with power, especially the European monarchies, and made possible a high control of the means of information.

This was for obvious reasons: the granting of privileges kept the possibility of control exactly in the hands of those who assigned them and guaranteed certain subordination or, at least, a kind of maintenance of power. It is not by chance that the attribution of privileges is a possibility of control and censorship. In this sense, it should be remembered that the economic development of the press introduces the debate in the universe of

¹² As indicated by Amado and Figueiredo, the document used as the primary source is a Latin translation that would have been written and authenticated by Silvério Wyenhorst, notary, as well as Valentim, and which is part of what is called the Codex Peutinger, for Having been part of Count Peutinger's collection, adviser to Emperor Maximilian. The translated document was named Navigation of the Portuguese beyond the equinoctial circle (Amado, Figueiredo, 1997, p.5).

issues of relevance to society, which includes topics of an economic order, not necessarily the point of view of the printing sector entrepreneurs or typography in controlling content. Content control, of course, was in the interest of the state, but what was particularly interesting to business was the economic guarantees for investment, as is well known. Privileges therefore correspond to one of the elements that make the investment more attractive and, of course, this is due to exclusivity.

In the case of the privilege attributed to Valentim Fernandes for the *Regiments of Judges and Officials*, it is plainly stated that the request for the attribution of the privilege was required when the work object of exclusivity was already printed, as previously stated. The printers/booksellers/publishers, therefore, would understand the need for investment to reach their interest, and thus it is relevant to consider, fundamentally, the economic character of the printings, as Lucas e Lucas (2001, p. 4) clarify:

The appearance of the press brings to the debate an economic dimension that provokes the real intervention (monarchical). Printers, also known as booksellers and who, in the current sense of the term, are also publishers, in effect, requesting the privileges to monetize important investments that involve manuscript revision work and manufacturing (production) operations.

In the case of Valentim Fernandes and the privilege in question, there seems to have been a guarantee for the production already made, or, in other words, for the investment already promoted. At the same time, it seems reasonable that the state has some control over the company that will provide copies containing the *Regiments of Judges and Officers*. This is because when one thinks of censorship, one can contemplate the control of content in two forms: 1 – to have in advance knowledge of the content of the works to be edited and printed and; 2 – to make sure that the works that are interested for editing and printing will not bear another's content.

For effective control, it is essential that the state can, at a minimum, closely monitor the issues. In the case of the privilege of 1503, the State completely controlled its contents and determined it to the printer. And, in addition, the content was already controlled even before the link to the

privilege that would authorize its printings, since it was content defined by the State itself, as it was the Regiment for Judges and Officials.

There are those, therefore, who understand that the development of the press would be slow as a result of the need to maintain power in the hands of the *status quo*, as is the case of Sodré: “the exchanges concerned only elements of classes and layers numerically reduced, however the development of the press was very slow at that stage, and it was easily controlled by the governmental authority” (Sodré, 1966, p. 02).

As can be concluded, the privilege attributed to Valentim Fernandes in 1503 brings important topics of discussion in the first moments of the biography of copyright, especially with regard to the relations of power.

LETTER GRANTING TO JACOBO CROMBERGER THE SAME PRIVILEGES, FREEDOMS AND HONORS OF KNIGHTS OF THE PORTUGUESE REAL HOUSE

Jacobo Cromberger was another German printer who, in addition to Valentim Fernandes and other pioneers of typography, worked in Portugal, having also arrived there as a consequence of the German diaspora.

It is a surname that historically stands out in the beginnings of the history of the press and of copyright, since he ended up forming a family of printers and booksellers in the Iberian peninsula. Jacobo Cromberger settled in Seville and developed his press there, having been granted privileges, such as the privilege of the favors, which are the object of these brief lines.

Cromberger worked with prominent Spanish printers – such as Estanislao Polo – and a curious episode in his private life that brought consequences to his professional life was the fact that he married the widow of Polo and eventually controlled the press that had been owned by the Spanish man.

On the other hand, Jacobo is much more referred to by his printings in Spain than in Portugal, since his career in that country was quite long

and, it is said, it was in Spain, especially in Seville, that his production was more prominent.

Later, the Cromberger family followed the job of their patriarch, being his son, Juan Cromberger, the founder of the press in America (in Mexico) and his grandson, who received the name of the grandfather, succeeded them in the same profession.

At the beginning of his activities, Jacobo got to edit about 600 titles, quite an expressive number for the time. Such data serve as a sort of certification to illustrate and show the magnitude of Cromberger's printings. As a measure of comparison, it is worth mentioning the information collected by Katzenstein, among other authors, which indicate how much the diffusion of the books was summarized before the advent of printing by the movable types. The author presents the numbers of copies in several libraries, and the quantities are absurdly low: the library of Emperor Charles V of France in 1364, consisted of 900 copies; The library of the Cathedral of Strasbourg in 91 manuscripts; The one of the Louvre, considered the "Paradise of Books", in 1000 copies, for example. In addition, the author reveals that a doctor of law would hold a maximum of six books and that of a Doctor of Medicine, up to five (Katzenstein, 1986, p. 343).

On the other hand, it is also important to point out that Cromberger already had a career in Spanish territory before acting in Portuguese lands, being very prestigious in that country, and that he entered Lusitanian lands at the invitation of King Manuel I, who, knowing the fame of Jacobo, Invited him to practice his trade in Portugal. It was to this same monarch that he edited the relevant *Manueline Orders*, in 1521, although this is not a unanimous information among historians, not being, for example, Norton's understanding:

In 1521, a collection of Portuguese royal ordinances appeared in five parts, each signed by Cromberger, two of them with the printing in Evora and three, including the last and only one dated 11 March, as of Lisbon. The circumstances are a little mysterious, as there is documentary evidence of Cromberger's presence in Seville until January 26, and the volume was a folio of over 500 sheets whose print may have taken a short time. No other Portuguese prints are known, it is thought it was during a visit to Lisbon that he died in 1528 (Norton, 1966, p. 13).

Cromberger was invited to practice the profession of printer in Portuguese territory, as said, by the monarch himself. But the document containing the authorization and privilege for printing was much broader, giving him the condition of exercising his offices and living his life as a member of the royal household. That is, more than the exclusivity to print or sell books, Cromberger receives the grant to benefit from all the conditions inherent to the members of the Portuguese royal house. It is not, therefore, a mere privilege of printing.

On the other hand, it is also necessary to analyze not only the content of the document, that is, the fact that it provides for privileges, guarantees and, of course, the nature of such conditions, but also the nature of the document itself. Its understanding is relevant to assessing the importance and historical significance of privilege assignments for the purpose of constructing a copyright biography.

The document under consideration is not a license or a privilege, but in fact a letter indicating all the advantages, privileges and conditions that have been assigned by the monarch to his beneficiary, Jacobo Cromberger, even because that is how the document refers to itself and as it begins to indicate its definition, already in the first lines: “Dom Manuell etc. Aquantos esta nossa carta_virem fazemos saber que, avendo nos Respeyto ao que em sua petiçam diz yacobo cromberger”¹³ (Portugal, 1508, p. 01).

The *letter* expression appears two more times, throughout the document, while the expression *privilege* appears three times, since the expression *license* is not used at any time.

Deslandes, on the other hand, considers that the document should be regarded as a license, even though that term is not included in it. Nevertheless, this author mentions, in his work of 1881, that:

Jacob Cromberger was a German and book printer. He was invited to serve in Portugal, where he dwelled from the 20th February of the year 1508 at the mercy of all the graces, privileges, freedoms and honors which there were then for the knights of the royal house. The *license* of mercy grants the same distinction to all those who then exercised or of the future to exercise the noble art of typography (1881, p. 7, emphasis added).

¹³ In archaic Portuguese, “From the part of Dom Manuel, by the means of this letter, it is made known that, having made it clear that this petition belongs to Jacobo Cromberger.”

It should be pointed out that there is no controversy between the use of the letter and the license, which interferes in this case with the legal nature of the document or even with the rights emanating from it. This is because a license, after all, is a document that authorizes or orders certain facts and has legal value. The difference would be that the permit assigns conditions to certain persons and the obedience of their terms to third parties. Already the letter would be a more general document, which would simply announce a certain condition, and this seems to be exactly the case of the document here commented. Discussions concerning the legal nature of the part, what really matters as regards the document in question are other issues, such as its privilege, because this is the expression that emanates from the first documents authorizing the first works published in an environment of analysis of copyright and law of literature. It is therefore much more important than analyzing the legal nature of the document itself, to understand whether privileges are antecedent conditions of rights, since these are generic, while those are specific. Moreover, it is also important to understand the nature of the privileges granted, rather than the documents themselves.

The use of the term privileges, in the analyzed document, was given in conjunction with others, namely: graces, freedoms and honors. All of them are conditions that were applied to the knights of the Portuguese royal house. In other words, the letter analyzed here gave Jacobo Cromberger much more than just the authorization to print works or simply books, but also other valuable conditions that he received for some reasons, all related to each other: because he was already known as a printer in the Spanish territory, for being a figure considered of social importance in that country and for having been invited directly by Dom Manuel I to work in Portuguese territory.

Thus, Jacobo received more than a simple decoration and permission to print, but all honors applicable to the knights of the real Portuguese house. He entered the Portuguese territory, so to speak, through the front door.

And, let it be noticed, at no time did anyone delineate any action on the part of the German printer, nor did assign limits to what he could print or how he could act in the incipient market of the printing industry.

Quite the contrary, the interpretation of the text of the letter allows much to be attributed to its beneficiary, as is perceived, for example, in this short passage:

E mandamos a todollos oficiaes e pesoas dos ditos nosos Regnos e senhorios a que esta nosa carta for mostrada e o conhecimento della pertencer que aos ditos ymprimidores, que o dito cabedall e as mais cousas tenerem e dellas uzarem em proll destes nosos Regnos e senhorios, guardem o dito privilegio homras e liberdades asy e tam compridamente como em esta nosa carta he conteudo sem duvida nem embargo allgum que a ello lhe seya posto, porque asy he nosa mercê (Portugal, 1508, p. 1)¹⁴.

There seems to be no doubt, therefore, that Cromberger's condition was highly privileged, which was liable to lead to certain conflicts with his fellow officers, although no such facts were known. On the other hand, one can obviously conclude that the relationship with King Dom Manuel the first would allow the control of published works and a highly promiscuous relationship between the power of the state and the position held by Jacobo.

Cromberger, therefore, compared with Valentim Fernandes and considering both the pioneers of an embryonic right and the law of literature, had broader privileges than this one, at least as far as the generic scope of the honors that were granted.

In any case, if Jacobo Cromberger came to fully enjoy the benefits achieved with the content and attributions derived from that letter is something that the biography of the copyright could not point with absolute security until the moment.

CONCLUSION

As previously indicated, this study had as its object the analysis of the first three privileges granted in the universe of Portuguese-speaking

¹⁴ In archaic Portuguese, “And we send out to all officials and persons from our reigns and allegiance holders or whomever by this house is considered a citizen that the said printer and the said goods and whatever he may need to use for the well-being of our reign, to them are granted the privileges, honors, freedoms and liberties as stated in this letter, whose content shall generate no doubts or oppositions whatsoever, since it is our grace’s will.”

countries and which were not yet constituted as copyright privileges. This historical process corresponds to the first steps of the biography of copyright and law of literature in Portuguese-speaking countries, as well as in the peninsular environment and even in the European context in general.

As a consequence, the study sought to favor the understanding of the different senses attributed to the expression *privileges*, in order to evaluate if the interpretation adopted by the authorialist doctrine is in agreement with the various meanings presented by this article. On the other hand, it also presents analyses about the pioneering privileges and their relations with printers and subjects-creators.

Also from the terminological point of view, the study presented the differences in the comprehension of expressions associated with the privileges – like letter and license – so that one could elucidate the different meanings of the expression privileges, concluding that, with more reason, this could not be, exactly, synonym of letter, royal letter, or charter. On the other hand, the similarities and differences in the attributions of privileges were also presented to the pioneers of copyright and, more specifically, a law of literature in Portugal: Valentim Fernandes and Jacobo Cromberger. Both can be attributed to the condition of beneficiaries of printing privileges considering the particularities that matter to each of them.

As a general conclusion, it can be said that printing privileges, even if considered the antecedents of national copyright laws, did not represent, in the most remote beginning of the copyright biography, the attribution of powers to the subject-creators. In the particular case of Portugal, it was only in the year 1536 that a special privilege was attributed to a subject-creator, who in this case was Gonçalo de Baena, followed in the subsequent year by Balthasar Dias.

Finally, in terms of the attribution of rights (and no longer privileges), in countries such as Portugal and Brazil, it derived from the reach of certain elements related to the French revolution, and in this case, obviously, the results achieved would impact the countries that received direct influence from revolutionary political movements, which includes the emergence of Portuguese-language copyright, especially with regard to their liberal constitutions. It happens that, until the revolutionary and liberal movements were reached, the historical development of privileges was

fundamental in the sedimentation of ideas about the protection of artistic, intellectual and literary creation. On the other hand, it is important to understand that the first laws of countries like Portugal turn out to be quite later, when compared with the first laws of England and France, pioneer countries in the attribution of copyright legislation. This evolution, as can be concluded, is part of a much later historical moment and, even if it deserves an indication, it will be better understood by a study particularly focused on the analysis of the historical movements of the eighteenth and nineteenth centuries.

If it is true, then, that the law of literature in Portuguese begins in the sixteenth century with the attribution of privileges, and while it is certain that the author (subject-creator) is not included among the first privileges, this circumstance also points for the possible misunderstanding, at the time, of the figure of the author.

This entire historical environment helps to explain why the author's rights, now, or increasingly, are considered an inherent right of investment, much more than protective of the creative process itself, a fact that I understand to be a misunderstanding of the structural order and an effective misunderstanding of the function of law.

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